

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

PCT

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION

See paragraph 2 below

International application No.
PCT/EP2005/002301

International filing date (day/month/year)
04.03.2005

Priority date (day/month/year)
10.03.2004

International Patent Classification (IPC) or both national classification and IPC
B01F13/08, B01F5/02, B01F3/08, A47J31/40

Applicant
NESTEC S.A.

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1b/s(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - a sequence listing
 - table(s) related to the sequence listing
 - b. format of material:
 - in written format
 - in computer readable form
 - c. time of filing/furnishing:
 - contained in the international application as filed.
 - filed together with the international application in computer readable form.
 - furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. II Priority

- The validity of the priority claim has not been considered because the International Searching Authority does not have in its possession a copy of the earlier application whose priority has been claimed or, where required, a translation of that earlier application. This opinion has nevertheless been established on the assumption that the relevant date (Rules 43bis.1 and 64.1) is the claimed priority date.
- This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

Box No. IV Lack of unity of invention

1. In response to the invitation (Form PCT/ISA/206) to pay additional fees, the applicant has:
 - paid additional fees.
 - paid additional fees under protest.
 - not paid additional fees.
2. This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rule 13.1, 13.2 and 13.3 is:
 - complied with
 - not complied with for the following reasons:
see separate sheet
4. Consequently, this report has been established in respect of the following parts of the international application:
 - all parts.
 - the parts relating to claims Nos.

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or
industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	1-12
	No: Claims	
Inventive step (IS)	Yes: Claims	1-12
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-12
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VIII Certain observations on the International application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Re Item IV Lack of unity of invention

1.1 This Authority considers that the international application contains the following separate inventions or groups of inventions which are not so linked together as to form a single general inventive concept (Rule 13.1 PCT):

Group 1: Claims 1 to 6

Independent claim 1 refers to a drink-stirring device for stirring or mixing liquid and/or powdered ingredients with a liquid in a drinking vessel; dependent apparatus claims 2 to 6 show further embodiments of such a device.

Group 2: Claims 7 to 12

Independent claim 7 discloses a method for stirring and [eventually] foaming a liquid in a vessel; dependent method claims 8 to 12 show further embodiments.

1.2 The only features in common to the two different inventions include the stirring of a liquid in a vessel, and the conduction of said liquid through a liquid delivery outlet tube which is rotatably attached to a drink-stirring device. However, these features are well known from some prior art already cited by the applicant, cf. f.ex. document EP 1155646 A1 (cf. in particular in par. [0001], [0013] to [0015], fig. 1, 2: cup 2, first pouring nozzle 12, rotatable shank 7), and these features are also provided to solve the problem of having a simple and easy-to-clean construction which does not contain any moving parts in the liquid [outlet] duct or tube, and which has a small overall height and only few moving parts, as indicated on p. 3 lines 4 to 7 of present application. Thus, these features cannot be considered to be special technical features.

1.3 The remaining features of the different inventions solve different problems by means of different potentially special technical features and the general problem cannot be considered as constituting a single general inventive concept between the four

inventions.

1.4 The problem to be solved by the first group of inventions may be regarded as to provide a more hygienic delivery and more hygienic stirring of a drink with reduced contact of the system with the liquid and, therefore, requiring less cleaning (cf. also on p. 3 line 38 to p. 4 line 2 of present application); the solution proposed is to have an external magnetic member, and an electromagnet arrangement being arranged outside the magnetic member for creating a variable magnetic field configured to move the liquid delivery outlet tube in rotation.

The problem to be solved by the second group of inventions may be regarded as to provide the advantage to adjust the pattern of a liquid jet to the type of drink to be prepared (cf. also on p. 4 lines 15 to 17 of present application); the solution proposed is to determine the rotation speed of a liquid delivery outlet tube so that the emerging liquid jet can be given a corresponding centrifugal effect.

1.5 Neither the objective problem underlying the subjects of the claimed inventions, nor their solutions defined by the special technical features allow for a relationship to be established between the said inventions, which involves a single general inventive concept. As a consequence, the present application contains two different groups of inventions dealing with different subject-matter since a single general inventive concept cannot be distinguished between these groups of inventions. Consequently, there is to be noted lack of unity, and the application does not meet the requirements of unity of invention as defined in Rules 13.1 and 13.2 PCT.

Re Item V **Reasoned statement under Rule 43bis1(a)(i) PCT with regard to novelty, inventive step or industrial applicability;**
Citations and explanations supporting such statement

2. STATE OF THE ART

Reference is made to the following documents:

D1: US-A-3 900 186
D3: US-A-4 465 377
D5: JP 62 294430 A

D2: US-A-1 242 493
D4: XP 000208452

D6: EP-A-1 155 646
D8: GB-A-1 367 354

D7: EP-A-0 373 126
D9: WO 03/092852 A

3. NOVELTY [Art. 33(2) PCT], INVENTIVE STEP [Art. 33(3) PCT]

3.1. The lack of clarity objections given under item VIII notwithstanding, claims 1 to 12 appear to be novel over the cited prior art, Art. 33(2) PCT, and do also involve an inventive step, Art. 33(3) PCT.

4. INDUSTRIAL APPLICABILITY [Art. 33(4) PCT]

4.1 For the assessment of claims 1 to 12 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. Present application is considered to be industrially applicable, Art. 33(4) PCT, Rule 67.1(i)-(vi) PCT, cf. also Guidelines PCT/GL/ISPE/1 14.01-14.06.

Re Item VIII

Certain observations on the international application

5.1 Some of the features in the apparatus claim 1 relate to a method of using the apparatus rather than clearly defining the apparatus in terms of its technical features, cf. "...being supplied...which conducts...for creating...". The intended limitations are therefore not clear from this claim, contrary to the requirements of Art. 6 PCT.

5.2 Some claims do not meet the requirements of Art. 6 PCT in that the matter for which protection is sought is not clearly defined since said claims attempt to define the subject-matter in terms of the result to be achieved, by using f.ex. the wording "...configured to move..." (claim 1), "...to create..." (claim 8), "...to describe..." (claim 9), which merely amounts to a statement of the underlying problem, without providing the technical features necessary for achieving the respective results.

5.3 The meaning of the expressions "...above..." (claim 1 line 6) as well as "...essentially..." (claim 6) and "...eventually..." (claim 7), respectively, is considered to be unclear, Art. 6 EPC.

5.4 At least claims 3 and 7 do not meet the requirements of Art. 6 PCT in that the matter for which protection is sought is not clearly defined since said claims attempt to define the subject-matter in terms of the result to be achieved, by using the wording "...so as to...", and "...so that...", respectively, which merely amounts to a statement of the underlying problem, without providing the technical features necessary for achieving this result.

5.5 The vague and imprecise statements in the description on p. 8 lines 8 to 11, and line 24, referring to 'non-limiting effects', imply that the subject-matter for which protection is sought may be different to that defined by the claims, thereby resulting in lack of clarity when used to interpret them, Art. 6 PCT.

5.6 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed at least in D1 is not mentioned in the description, nor is this document identified therein.

5.7 The citation given on p. 1 lines 19, 20 should be verified and corrected accordingly since said citation seems to relate to different subject-matter not being of some relevance for the subject-matter of present application.
